

MONTANA LEGISLATIVE HISTORY

Chapter 263 1989

Bill H 206 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) _____ c

2/1 ☒ c

_____ c

_____ c

Date Out

2/1 ☒ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/9 ☒ c

_____ c

3/9 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☒ No

Committee _____

Report _____

HOUSE BILL NO. 206

INTRODUCED BY GOULD

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

JANUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 17, 1989	FIRST READING.
FEBRUARY 2, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 3, 1989	PRINTING REPORT.
FEBRUARY 4, 1989	SECOND READING, DO PASS.
FEBRUARY 6, 1989	ENGROSSING REPORT.
FEBRUARY 7, 1989	THIRD READING, PASSED. AYES, 92; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 8, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 14, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 206

INTRODUCED BY [Signature]

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MANDATORY SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY A FINE RELATED TO THE INABILITY TO SHOW PROOF OF FINANCIAL RESPONSIBILITY; AND AMENDING SECTION 61-5-214, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-5-214, MCA, is amended to read:

***61-5-214. Mandatory suspension for failure to appear or pay fine.** The department shall suspend the license or driving privilege of an operator ~~or-chauffeur~~ immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the operator ~~or chauffeur~~:

(1) is guilty of a violation of 61-5-302 through 61-5-306, 61-5-309, ~~chapter-12, part-6~~, or chapters 3, 6, 7, 8, 9, or 10 of this title or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred; and

(2) (a) failed to post the set bond amount or appear as ordered by the court or appear upon issued summons; or

(b) failed to forfeit the posted bond amount or, when assessed a fine, costs, or restitution of \$100 or more, failed to pay ~~such~~ the fine, costs, or restitution; and

(3) received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 1, 1989, at
8:05 a.m.

ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:

Rep. Mary McDonough stated that in the 1987 Legislature the public retirement benefits were made exempt from bankruptcy proceedings. This bill would make private retirement benefits exempt from bankruptcy proceedings. Rep. McDonough commented that her main proponent was unable to attend the hearing; therefore, Sen. Mazurek was available for questioning and to help clarify the bill.

Testifying Proponents and Who They Represent:

Senator Joe Mazurek, Senate District 23

Proponent Testimony:

Sen. Mazurek commented that in the past, public retirements have been exempt from execution and have been exempt in bankruptcy proceedings. When the exemptions were redone by the committee, chaired by Rep. Mercer and Sen. Halligan, they extended the exemptions to private pensions as well as public employee retirement to give the same benefits to people who retired having worked in the private sector. On December 27, Judge Peterson said that it wasn't clear to him that we had intended to exempt all private pensions including IRA's from execution and from bankruptcy proceedings.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski questioned if someone can have stocks and bonds and say that it is for retirement? Sen. Mazurek stated yes and no. An individual retirement account - yes. Stocks and bonds - no. He stated that it has to be a pension or annuity benefit as that is what the language of the bill says.

Rep. Addy commented that Section 2 of the bill does not talk about pensions or retirement benefits. It talks about earnings of a judgement debtor. What is the reason for changing that language? Sen. Mazurek stated that it also deals with a repealer. Both the repealer and Section 2 are just corrections of what was done in 1987. He commented that he was not a part of the drafting of the bill, but it was to his understanding that those two changes are to clarify that when we are dealing with the wages of a judgement debtor, we have merely conformed our statute to the federal law and to the changes in which were made in 1987.

Closing by Sponsor: Rep. McDonough closed and submitted documentation from Warren C. Wenz in favor of HB 248 (EXHIBITS 1 and 2).

DISPOSITION OF HOUSE BILL 248

Motion: A motion was made by Rep. McDonough to DO PASS, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 206

Presentation and Opening Statement by Sponsor:

Rep. Gould stated that this is a very simple bill and one he hoped the Committee would approve of. On that note, he commented that he would like to let the proponents of the bill speak and that there is a need for one amendment.

Testifying Proponents and Who They Represent:

Peter Funk, Assistant Attorney General, Department of Justice

Wally Jewell, Montana Magistrates Association

Michael Sherwood, Montana Trial Lawyers Association

Proponent Testimony:

Peter Funk stated that in 1987, the legislature adopted this particular statute which basically created a scheme by which the division of Motor Vehicles could suspend a person's drivers license if several things occurred. 1.) The person would first of all have to be sighted for a violation of some section of the Motor Vehicle Code which is embodied in paragraph 1 of the bill. 2.) If the person is sighted for a motor vehicle offense and they either fail to post a bond or appear at the appointed time for appearance in court. 3.) If they fail to forfeit the posted bond or to an assessed fine. 4.) If they have received notice that those things are necessary and they are found guilty of the underlying offense by the court. If all those things occur then under this existing statute, the motor vehicle division suspends their drivers license until they either appear before the court or pay the fine or do what the court has asked them to do. Mr. Funk commented that in putting the bill together, there is a serial list beginning on line 20 in the Motor Vehicle Code. Their whole proposal in this bill is to insert the number 6 in that list to simply include one chapter in the Motor Vehicle Code which was not included when the bill was passed in 1987. Chapter 6 of the Motor Vehicle Code deals with financial responsibility of vehicle owners or users. It does such things as defines what type of a mandatory liability policy is necessary in Montana. Additionally, it specifies the misdemeanor offenses if those types of policies are not carried. There is also a scheme within that chapter that deals with the suspension of a drivers license for failure to pay a judgement if the person is involved in a traffic accident. Mr. Funk stated that in any event, their intent in proposing this change is to simply make the statute as inclusive as it appears, as though it was designed to be. The language in line 19-21 is intended to cover every potential violation within the Motor Vehicle Code. It simply doesn't do that without chapter 6 being mentioned. One additional factor is that this problem was brought to their attention by several different j.p.'s who when they were used to using this process came upon a violator of chapter 6. There are also some grammatical changes. The striking of the language "or chauffeur" is another clean-up. We don't have anything anymore that is called a chauffeurs license. The title refers only to the inability to show proof of financial responsibility and that refers to one particular violation of chapter 6 of the Motor Vehicle codes. Mr. Funk stated that they would propose that that would be broadened to say

on line 7, appear or pay a fine related to a violation of chapter 6 of title 61 relating to the responsibility of vehicle users and owners.

Wally Jewell presented written testimony in favor of HB 206 (EXHIBIT 3).

Michael Sherwood commented that the Montana Trial Lawyers were in full support of this legislation. Having insurance isn't just a good idea, it's the law.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Hannah questioned what the offenses are in title 61. Mr. Funk commented that basically all of them relate to the failure to have the required kind of liability insurance. There are several others within the statute but they all relate to carrying the right type of financial protection.

Closing by Sponsor: Rep. Gould closed.

DISPOSITION OF HOUSE BILL 206

Motion: Rep. Gould moved DO PASS, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Gould moved to amend the title so that it conforms with the bill. He recommended changing the title in line 7, delete "related to the inability to show proof". Line 8, delete "of", insert for a violation of the motor vehicle. Following "financial responsibility", insert laws. Page 1, line 19, delete the words "guilty of", insert is charged with. The reason for that last amendment is because what actually happens is they are charged with one of these offenses and either fail to appear or they fail to pay the fine. If that happens then their license can be suspended. Rep. Boharski seconded the amendments.

A vote was called on the amendment and CARRIED.

Recommendation and Vote: Rep. Boharski moved DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken and CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 1, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 206 (first reading copy -- white) do pass as amended.

Signed: Dave Brown
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 7.

Strike: "RELATED TO THE INABILITY TO SHOW PROOF"

2. Title, line 8.

Strike: "OF"

Insert: "FOR A VIOLATION OF THE MOTOR VEHICLE"

Following: "FINANCIAL RESPONSIBILITY"

Insert: "LAWS"

3. Page 1, line 19.

Strike: "guilty of"

Insert: "charged with"

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 9, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:

Representative John Cobb of Augusta, District 42, opened the hearing. He said the bill was to allow the placing of an SRS or county lien on, rather than subrogation interest in, a third-party recovery by a recipient whose medical expenses were paid by the department or county. He said that SRS and AFDC may be paying benefits for a party on welfare. If that person wins a lawsuit for a large amount of money, this bill will grant SRS authority to ask for some recovery by allowing a lien to be used to obtain the money. The hospitals and doctors already have this right and the SRS should also, he stated. The House amended the bill to provide that, unless the SRS pays the attorney fees, then the SRS is only entitled half of the recovery. This would make the SRS pay the attorneys fees which the hospitals and the doctors don't have to do, he added.

List of Proponents:

Russell Cater, Social and Rehabilitative Services

that some lien laws require a lengthy requirements, but in this situation, that would not apply. In 99% of the cases, the parties don't go to court, he stated.

Senator Crippen asked about the amendment limiting attorneys' liability. Russell Cater said they did not have any opposition to changing the definition of "legal representative" to "attorney".

Closing by Sponsor: Representative Cobb closed the hearing.

DISPOSITION OF HOUSE BILL 204

Discussion: None

Amendments and Votes: Senator Mazurek MOVED the amendments proposed by the SRS. (Exhibit 7) The MOTION CARRIED UNANIMOUSLY.

Senator Bishop MOVED the Crippen amendment MOVED to amend on p. 8, l. 25 through p. 9, line 3, following "attorney" to strike the remainder of line 25 through "corporation" on p. 9, line 3, to answer concerns he had regarding too much responsibility on the legal representative. He said he had talked with the department about that and they had no problem with his suggestion.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 204 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 206

Presentation and Opening Statement by Sponsor:

Representative Budd Gould of Missoula, District 61, opened the hearing. He said the bill was simply a housekeeping measure. Its purpose was to suspend a driver's license for failure to appear and to pay for proof of insurance.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Department of Justice
Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Peter Funk said the bill was requested by the Department of Justice. He said the statute involved was adopted by the 1982 Legislature and essentially allows the department to suspend a driver's license in a variety of circumstances. In addition to being guilty of a particular offense, an individual must (under (2)), fail to appear in court, or must forfeit a bond. And, they must receive signed notice of this particular process. Sub paragraph 1 was intended to be inclusive of all potential motor vehicle offenses. Potentially everything in the motor vehicle code, except offenses found in Chapter 6, were included by the 1987 Legislature, he said. Chapter 6 relates to the requirement of mandatory liability insurance and states that those individuals are required to have proof of financial responsibility. The bill is to include violations which relate to a person's carrying or lack of carrying of liability insurance.

Line 15 "or chauffeur" is stricken because the 1987 Legislature deleted all references to a chauffeur's license. That term is no longer used anywhere in code so, to be consistent, it should be taken out in this part of statute. The other change is on line 20, striking "Chapter 12, Part 6", he told the committee. That is being stricken because Chapter 12, Part 6 was repealed in the Motor Vehicle Code and no longer exists, he stated.

Wallace Jewell presented written testimony to the committee (Exhibit 2).

Questions From Committee Members: None

Closing by Sponsor: Rep. Gould closed.

DISPOSITION OF HOUSE BILL 206

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House bill 206 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

SENATE STANDING COMMITTEE REPORT

March 9, 1909

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 206 (third reading copy -- blue), respectfully report that HB 206 be concurred in.

Sponsor: Gould (Harp)

BE CONCURRED IN

Signed: _____
Bruce B. Gilpin, Chairman

44-14187
J.P.M.

scribble box

Montana Magistrates Association

9 March 1989

Testimony offered in support of HB206, a bill for an act entitled: "An act to provide for mandatory suspension of a driver's license for failure to appear or pay a fine for a violation of the motor vehicle financial responsibility laws."

Given before the Senate Judiciary Committee by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The judges of the limited jurisdiction courts support this measure. In many courts the offense of failing to show proof of liability insurance is the most prevalent of offenses due in part to the high cost of liability insurance. In many instances the individual who is charged does not obtain insurance because it is easier and cheaper to take a chance on not getting a ticket than it is to purchase the insurance.

Once cited, many of these individuals simply do not bother to appear in court to answer the charges or do not bother to appear to pay their fines. If they were to lose their driver's license for failing to appear or for failing to pay a fine for failing to show proof of liability insurance there is a possibility the number of these offenses would decrease.

The judges of the limited jurisdiction courts of Montana feel that the operation of a motor vehicle is a privilege granted by the state to certain persons through a driver's license. As such, when a person fails to acknowledge the responsibilities that go hand in hand with the operation of a motor vehicle the privilege to operate that motor vehicle should be forfeit.

We urge your agreement and your giving this measure a do concur recommendation from the committee.

Wallace A. Jewell